



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2020-0444]

RIN 1625- AA87

Security Zone; North Atlantic Ocean, Approaches to Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of the North Atlantic Ocean. The security zone is necessary to prevent waterside threats before, during, and after National Geospatial-Intelligence Agency equipment testing conducted offshore near Ocean City, MD. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Maryland-National Capital Region or his designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 9:30 p.m. on August 28, 2020. For the purposes of enforcement, actual notice will be used from 9 a.m. on July 27, 2020, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2020-0444 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division , U.S. Coast Guard; telephone 410-576-2674, Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a comment period for this rulemaking due to the short time

period between event planners notifying the Coast Guard of the event and required publication of this security zone. It is necessary for the Coast Guard to establish this security zone by July 27, 2020, in order to ensure the appropriate level of waterborne protection for the public, mitigation of potential terrorist acts, and enhancing maritime safety and security in order to safeguard life, property, and the environment.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest for the same reasons discussed above for forgoing notice and comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Maryland-National Capital Region has determined that a security zone is needed for waterborne protection of the public, mitigation of potential terrorist acts, and the enhancing of public and maritime safety and security in order to safeguard life, property, and the environment on or near the navigable waters near Ocean City, MD.

IV. Discussion of the Rule

This rule establishes a security zone from 9 a.m. on July 27, 2020, through 9:30 p.m. on August 28, 2020. The security zone will be enforced from 9 a.m. to 9:30 p.m. on July 27, 2020, and those same hours on July 28, 2020, July 29, 2020, July 30, 2020, July 31, 2020, August 24, 2020, August 25, 2020, August 26, 2020, August 27, 2020, and August 28, 2020. The security zone will cover all waters of the North Atlantic Ocean, from surface to bottom, encompassed by a line connecting the

following points beginning at 38°23'56" N, 074°48'06" W, thence south to 38°21'40" N, 074°48'33" W, thence south to 38°17'54" N, 074°49'57" W, thence southwest to 38°15'04" N, 074°51'44" W, thence northwest to 38°18'52" N, 074°54'24" W, thence north to 38°22'55" N, 074°52'44" W, and northeast back to the beginning point. The zone is approximately 9.3 nautical miles yards in length and 3.6 nautical miles yards in width. If a person or vessel has been granted permission to enter the zone, while they are operating in the zone that they must not enter waters within 1,000 yards of the on scene Coast Guard vessel or test equipment being used by Coast Guard personnel.

The duration of the rule and enforcement of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the Coast Guard vessel and test equipment are being used. All vessels and persons must obtain permission from the COTP Maryland-National Capital Region or his designated representative before entering the security zone. Equipment testing operations may occur anywhere within the security zone during the enforcement periods. Vessels and persons will not be permitted to enter the security zone within 1,000 yards of the Coast Guard vessel or test equipment. While this 1,000- yards area lies within the security zone, its exact location within the security zone may change.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the location and duration of the security zone. This security zone will be enforced 125 hours over the course of a one month period. Vessels will be able to safely transit around the security zone, which impacts a small area of the North Atlantic Ocean, where vessel traffic is normally low. Additionally, the Coast Guard will make notifications to the maritime community via marine information broadcasts. The Coast Guard will update such notifications as necessary to keep the maritime community informed of the status of the security zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone lasting only 125 total enforcement hours that will prohibit entry within a small portion of

the North Atlantic Ocean. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0444 to read as follows:

§ 165.T05-0444 Security Zone; North Atlantic Ocean, Approaches to Ocean City, MD.

- (a) *Location.* The following is a security zone: All waters of the North Atlantic

Ocean, from surface to bottom, encompassed by a line connecting the following points beginning at 38°23'56" N, 074°48'06" W, thence south to 38°21'40" N, 074°48'33" W, thence south to 38°17'54" N, 074°49'57" W, thence southwest to 38°15'04" N, 074°51'44" W, thence northwest to 38°18'52" N, 074°54'24" W, thence north to 38°22'55" N, 074°52'44" W, and northeast back to the beginning point. All coordinates are based on datum NAD 83.

(b) *Definitions.* As used in this section---

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means the Coast Guard commissioned, warrant, or petty officer operating the on scene Coast Guard vessel designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter the security zone described in paragraph (a) of this section, contact the COTP or the COTP's representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessel enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) A person or vessel operating in the security zone described in paragraph

(a)(1) of this section must not enter waters within 1,000 yards of the on scene Coast Guard vessel or test equipment being used by Coast Guard personnel.

(d) *Enforcement periods.* This section will be enforced 9 a.m. to 9:30 p.m. on July 27, 2020, and those same hours on July 28, 2020, July 29, 2020, July 30, 2020, and July 31, 2020, August 24, 2020, August 25, 2020, August 26, 2020, August 27, 2020, and August 28, 2020.

Dated: July 23, 2020

Joseph B. Loring,
Captain, U.S. Coast Guard,
Captain of the Port Maryland-National Capital Region.
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